

STATUTORY CONSTRUCTION – "Rule of Lenity," which requires any doubt to be resolved in favor of defendant, applies *only* when law is ambiguous and it is impossible to divine legislative intent.....Revised 12/2009

A.R.S. § 1-211(C) did away with the common-law rule that penal statutes should be strictly construed. See, e.g., *State v. Wayman*, 104 Ariz. 125, 128, 449 P.2d 296, 299 (1969) ("It is the law of this jurisdiction that penal statutes are to be strictly construed."). That subsection provides:

The rule of the common law that penal statutes shall be strictly construed has no application to these revised statutes. Penal statutes shall be construed according to the fair import of their terms, with a view to effect their object and to promote justice.

Nevertheless, the Arizona appellate courts have applied the "rule of lenity," which dictates that if a criminal statute is ambiguous and susceptible to more than one interpretation, any doubt should be resolved in favor of the defendant. *State v. Pena*, 140 Ariz. 545, 683 P.2d 744 (App. 1983), *approved and adopted*, 140 Ariz. 544, 683 P.2d 743 (1984); see also *State v. Brown*, 217 Ariz. 617, 621, ¶ 11, 177 P.3d 878, 882 (App. 2008). For example, in *Vo v. Superior Court*, 172 Ariz. 195, 200, 836 P.2d 408, 413 (App. 1992), Vo shot a pregnant woman in the head, killing her and her viable fetus. The grand jury returned an indictment for two counts of first degree murder, one for the woman and one for the fetus. Vo argued that he could not be held criminally liable for the death of the fetus. The Court of Appeals found that the homicide statutes as they read at that time were ambiguous as to whether the words "person" and "human being"

included a viable fetus. Thus, the Vo Court held, the rule of lenity required it to find that killing a fetus did not constitute murder.¹ *Id.* at 202, 836 P.2d at 415.

However, the rule of lenity **does not apply** when a statute is clear and unambiguous. *State v. Fell*, 203 Ariz. 186, 189, ¶ 10, 52 P.3d 218, 221 (App. 2002); *State v. Calderon*, 171 Ariz. 12, 14, 827 P.2d 473, 475 (App. 1991). That is, the rule of lenity should **only** be applied when it is impossible to determine the legislative intent of the ambiguous statute. See *Raney v. Lindberg*, 206 Ariz. 193, 200, ¶ 21, 76 P.3d 867, 874 (App. 2003) (rule of lenity is inapplicable if the intent behind the statute is “discernable”); *Norgord v. State ex rel. Berning*, 201 Ariz. 228, 231-232, ¶ 13, 33 P.3d 1166, 1169-1170 (App. 2001) (rule of lenity only applies when legislative intent is “unascertainable”). Thus, when statutes are not in conflict, it is error to invoke the rule of lenity. *State v. Story*, 206 Ariz. 47, 51, ¶ 15, 75 P.3d 137, 141 (App. 2003); *State v. Johnson*, 195 Ariz. 553, 555, ¶ 10, 991 P.2d 256, 258 (App. 1999). In *State v. Sanchez*, 209 Ariz. 66, 68, ¶ 6, 97 P.3d 891 (App. 2004), the Court of Appeals explained that in interpreting statutes, a court must strive “to effectuate the legislature’s intent in enacting it,” looking to “the plain language of the statute.” If that language is unclear, the court may consider other factors, such as the statute’s context, history, subject matter, effects and consequences, spirit, and purpose. *Id.* Only if that endeavor nevertheless leaves a statute susceptible to more than one interpretation will the court apply the rule of lenity. *Id.* The rule of lenity does not apply when the court can discern the intent behind the statute. *Cicoria v. Cole*, 222 Ariz. 428, ¶ 20, 215 P.3d 402, 405 (App. 2009) (rule of

¹The Arizona legislature has amended the statutes since Vo was decided. It is now manslaughter to kill an unborn child “by any physical injury to the mother of such child

lenity is triggered only if the statute remains ambiguous after the courts have applied the other tenants of statutory construction); *Raney v. Lindberg*, 206 Ariz. 193, 200, ¶ 21, 76 P.3d 867, 874 (App. 2003).

which would be murder if the death of the mother had occurred.” A.R.S. 13-1103(A)(5).